

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JEROME BROWN,

Plaintiff,

vs.

WARDEN, HIGH DESERT STATE
PRISON, et al.,

Defendants.

Case No. 2:05-CV-01122-JCM-GWF

FINDINGS & RECOMMENDATIONS

This matter is before the Court on Plaintiff's Motion to Issue Indictments to the Defendants (#15), filed on July 14, 2006 and Defendants' Opposition to Plaintiff's Motion to Issue Indictment to the Defendants (#16), filed on July 28, 2006.

Also before the Court is Plaintiff's Defaulted Motion Against Defendants C/O J. Bean and C/O Jeremy Jackson (#17), filed on August 14, 2006 and Defendants' Opposition to Plaintiff's Defaulted Motion Against Defendants C/O J. Bean and C/O Jeremy Jackson (#18), filed on August 15, 2006.

BACKGROUND

Plaintiff filed a Complaint on November 1, 2005. Plaintiff then filed an Amended Complaint on November 30, 2005 alleging that correctional officers Bean and Jackson used excessive force against him without justification while they were escorting him from his housing unit to the administrative offices of the prison due to his refusal to follow a direct order issued by Officer Bean. Plaintiff also alleges that while he was handcuffed and walking without resistance, the officers stopped and assaulted him, grabbing him by the arms, picking him up, and driving his face into the pavement,

1 knocking him unconscious. Plaintiff states that when he awakened in a cell in the administrative
2 section of the prison, his head and hip were injured and his face was bloody. On March 1, 2006, the
3 Honorable James C. Mahan ordered that Plaintiff's Amended Complaint may proceed on a claim of
4 excessive force against Defendants Bean and Jackson only. Judge Mahan further ordered that the
5 Office of the Attorney General of the State of Nevada advise the Court whether the Office of the
6 Attorney General could accept service of process for Defendants Bean and Jackson. If the Office of the
7 Attorney General accepted service of process for Defendants Bean and Jackson, such Defendants would
8 then be required to file and serve an answer to Plaintiff's Amended Complaint by April 30, 2006. On
9 March 21, 2006, the Office of the Attorney General gave Notice to this Court that they could not accept
10 service of process for Defendants Bean or Jackson because it was not clear which Bean or Jackson was
11 the proper Defendant. Plaintiff subsequently filed a Motion to Issue Indictments to the Defendants on
12 July 14, 2006. Plaintiff then filed a Defaulted Motion Against Defendants J. Bean and Jeremy Jackson
13 on August 14, 2006.

14 DISCUSSION

15 Pursuant to Fed. R. Civ. P. 4(c)(1), the plaintiff is responsible for service of summons and
16 complaint within the time allowed under subdivision (m). Pursuant to Fed. R. Civ. P. 4(m), plaintiff
17 has 120 days to serve defendant the summons and complaint. Plaintiff filed his Amended Complaint on
18 November 30, 2005, and therefore, Plaintiff had until March 30, 2006, to serve the Defendants his
19 Complaint. Because the Office of the Attorney General gave Notice that they could not accept service
20 of process for Defendants Bean or Jackson, Plaintiff was then responsible for service of summons and
21 complaint within 120 days. Pursuant to Fed. R. Civ. P. 4(m), if the service of summons and complaint
22 is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion
23 or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice. If the
24 plaintiff can show good cause for the failure to serve the complaint to the defendant, the court shall
25 extend the time for service. *Id.* To this date, Plaintiff has still not served Defendants Bean or Jackson
26 the summons and complaint. Plaintiff has not shown good cause for failure to serve the complaint to
27 Defendants Bean or Jackson. Accordingly,

28 ...

